

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS, EAST ST. LOUIS DIVISION**

OSBALDO J. NICOLAS,)
Plaintiff,)
v.) Case No. 15-cv-964-NJR-DGW
NATHAN BERRY; WILLIAM QUALLS; JUSTIN)
SNELL; MATTHEW PURDOM; ROBERT)
HUGHES; JASON HART; RICHARD)
HARRINGTON; KIMBERLY BUTLER; and)
AIMEE LANG,)
Defendants.)

DEFENDANTS' PARTIAL MOTION FOR SUMMARY JUDGMENT

NOW COME Defendants, RICHARD HARRINGTON, ROBERT HUGHES, WILLIAM QUALLS, JUSTIN SNELL, JASON HART, MATTHEW PURDOM, NATHAN BERRY, and AIMEE LANG, by and through their attorney, Lisa Madigan, Attorney General for the State of Illinois, and pursuant to Fed. R. Civ. P. 56, hereby move for partial summary judgment, stating as follows:

1. Plaintiff filed suit pursuant to 42 U.S.C. §1983 alleging (1) Defendants Berry and Qualls violated Plaintiff's Eighth Amendment rights when they allegedly used excessive force against him on February 5, 2014; (2) Defendants Berry, Qualls, Snell, and Purdom failed to intervene to stop this alleged use of force; (3) Defendants Berry, Qualls, Snell, Purdom, and Lang were deliberately indifferent to Plaintiff's serious medical needs following the alleged use of force; (4) Defendants Hughes, Hart, and Harrington denied Plaintiff due process during the hearing for the disciplinary tickets from February 5, 2014; (5) Defendants Berry and Qualls committed a battery against Plaintiff; (6) Defendants Berry and Qualls committed an assault against Plaintiff; (7) Defendants Berry and

Qualls intentionally inflicted emotional distress upon the Plaintiff; and (8) All Defendants exhibited negligent or willful and wanton conduct.

2. Defendants admit there is a genuine issue of material fact precluding summary judgment on Plaintiff's excessive force, failure to intervene, and pendent state law assault and battery claims against Defendants Berry and Qualls. Plaintiff, however, cannot prevail on the remainder of the claims and Defendants move for summary judgment on those claims.

3. Plaintiff cannot show Defendants Purdom and Snell had a reasonable opportunity to intervene and they are, therefore, entitled to summary judgment on Plaintiff's Eighth Amendment failure to intervene claims.

4. Plaintiff did not suffer from an objectively serious medical need and Defendants were not deliberately indifferent to any such need. Defendants Berry, Qualls, Snell, Purdom, and Lang are, therefore, entitled to summary judgment on Plaintiff's Eighth Amendment deliberate indifference to serious medical need claims.

5. Plaintiff received all due process to which he is entitled under *Wolff v. McDonnell*, 418 U.S. 539 (1974) and Defendants Hart, Hughes, and Harrington are entitled to summary judgment on Plaintiff's due process claims. Defendant Harrington is also entitled to summary judgment on this claim because he lacks the requisite personal involvement required to be liable.

6. Defendants Berry and Qualls are entitled to summary judgment on Plaintiff's intentional infliction of emotional distress claim because Plaintiff does not describe conduct that is extreme or outrageous, Plaintiff has no evidence of the intent of the Defendants, and Plaintiff did not suffer from emotional distress.

7. Defendants Berry and Qualls are entitled to summary judgment on Plaintiff's negligent and/or willful and wanton conduct claims.

8. Defendants are entitled to sovereign immunity under the Eleventh Amendment and Illinois law.

9. Defendants are entitled to qualified immunity.

10. A memorandum of law is attached hereto and filed contemporaneously herewith.

WHEREFORE, for the above and foregoing reasons, Defendants respectfully request this Honorable Court grant their motion and enter summary judgment in Defendants' favor.

Respectfully submitted,

RICHARD HARRINGTON, ROBERT HUGHES,
WILLIAM QUALLS, JUSTIN SNELL, JASON
HART, MATTHEW PURDOM, NATHAN
BERRY, and AIMEE LANG,

Defendants,

LISA MADIGAN, Attorney General,
State of Illinois,

Attorney for the Defendants,

s/ Melissa A. Jennings
Melissa A. Jennings, #6300629
Assistant Attorney General
500 South Second Street
Springfield, IL 62701
Phone: (217) 785-4555
Fax: (217) 524-5091
E-Mail: mjennings@atg.state.il.us

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CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2017, I electronically filed Defendants' Partial Motion for Summary Judgment, with the Clerk of the Court using the CM/ECF system, which will send notification of same to the following:

Arthur Loevy: loevylaw@loevy.com
Jon Loevy: jon@loevy.com
Sarah Grady: sarah@loevy.com

Respectfully submitted,

LISA MADIGAN, Attorney General,
State of Illinois,

s/ Melissa A. Jennings
Melissa A. Jennings, #6300629
Assistant Attorney General
500 South Second Street
Springfield, IL 62701
Phone: (217) 785-4555
Fax: (217) 524-5091
E-Mail: mjennings@atg.state.il.us